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2 **IN THE UNITED STATES DISTRICT COURT FOR THE**
3 **WESTERN DISTRICT OF MISSOURI**
 SOUTHERN DIVISION

4 **UNITED STATES OF AMERICA,**) **Case No. 17-03063-01-CR-S-RK**
)
5 **Plaintiff,**) **Springfield, Missouri**
) **February 26, 2018**
6 **v.**)
)
7 **DAVID A. NELSON,**)
)
8 **Defendant.**)
)

9
10 **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**
11 **BEFORE THE HONORABLE DAVID P. RUSH**
 UNITED STATES MAGISTRATE JUDGE

12 **APPEARANCES:**

13 For the Plaintiff: Mr. Nhan D. Nguyen
 Assistant United States Attorney
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 (417) 831-4406

15 For the Defendant: Ms. Ann M. Koszuth
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25 Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

(Court in Session at 9:28 a.m.)

THE COURT: Calling in *United States vs. David Nelson*.

The defendant appears in person along with his attorney, Ms. Ann Koszuth. The United States appears by Assistant United States Attorney, Mr. Nhan Nguyen. This matter is set this morning for a change of plea to the Indictment returned against this defendant on May 10th of 2017. Mr. Nelson, you have signed a consent to have these proceedings for a plea of guilty before a Magistrate Judge, with the understanding that a United States District Judge, a judge of higher jurisdiction, will keep your case for acceptance of the plea of guilty and sentencing. Even though you signed this consent you have a right, if you wish, to appear before a United States District Judge, a judge of higher jurisdiction, for these proceedings. At any appearance before the District Judge, you're presumed innocent until such time, if ever, as the Government establishes your guilt beyond a reasonable doubt to the satisfaction of the judge or jury. You always have a right to be present and to confront and cross-examine witnesses. You have a right to use the power of the court to subpoena evidence on your behalf and you have a right to testify or not testify as you would choose. And if you chose not to testify it would not be held against you as that is your right. If, after understanding the charge against you, the range of punishment, if convicted, and your right to appear before a District Judge, if you wish, you may waive or give up that right

1 and proceed this morning before the Magistrate Judge. As I
2 indicated, you have signed such a consent. Do you understand
3 that you have a right to appear before a United States District
4 Judge, a judge of higher jurisdiction, for these proceedings?

5 MR. NELSON: Yes, sir.

6 THE COURT: And I'm going to ask you just to speak up a
7 little bit. I can hear you but it's being recorded and
8 transcribed, so if you'll just speak up. I know you --

9 MR. NELSON: Yes, sir.

10 THE COURT: All right. Thank you. And is it your
11 desire to give up that right and proceed this morning before the
12 Magistrate Judge?

13 MR. NELSON: Yes, sir.

14 THE COURT: Again, I can hear you. You're going --

15 MR. NELSON: Yes, sir.

16 THE COURT: Yeah, you just have to speak up. You're
17 very soft-spoken. Do you understand the charge against you in
18 the Indictment in this case?

19 MR. NELSON: Yes, sir.

20 THE COURT: Do you understand that if convicted of the
21 charge in the Indictment, that the maximum penalty the court may
22 impose is not more than 10 years imprisonment, not more than a
23 \$250,000 fine, not more than three years supervised release, and
24 a \$100 mandatory special assessment?

25 MR. NELSON: Yes, sir.

1 THE COURT: To the charge in the Indictment, how do you
2 wish to plead, guilty or not guilty?

3 MR. NELSON: Guilty.

4 THE COURT: Would you please raise your right hand as
5 best you can?

6 DAVID A. NELSON, DEFENDANT, SWORN

7 THE COURT: Has anyone made any threat of any kind to
8 force you to plead guilty or give up any of the rights that we've
9 discussed this morning?

10 MR. NELSON: No, sir.

11 THE COURT: Has anyone promised you anything to induce
12 you or overcome your will to get you to plead guilty or give up
13 any of the other rights we've discussed?

14 MR. NELSON: No, sir.

15 THE COURT: I mentioned to you that there was a
16 supervised release term of not more than three years that could
17 be imposed in your case. Do you understand that if that term
18 were imposed and then revoked for any reason, that you could be
19 required to serve an additional term of imprisonment of not more
20 than two years, and if that happened, you would receive no credit
21 for any other time you had spent either in custody or on release?

22 MR. NELSON: Yes, sir.

23 THE COURT: Do you understand that the court could then
24 impose an additional term of supervised release, which is
25 governed by the maximum of the statute, minus any time you'd

1 spent in custody as a result of a violation?

2 MR. NELSON: Yes, sir.

3 THE COURT: Do you understand that from a sentence
4 imposed in your case that there is no parole?

5 MR. NELSON: Yes, sir.

6 THE COURT: Do you understand that there are Sentencing
7 Guidelines to which the District Court would refer to in an
8 advisory capacity when attempting to fashion a reasonable
9 sentence in your case?

10 MR. NELSON: Yes, sir.

11 THE COURT: Have you discussed the guidelines with your
12 attorney?

13 MR. NELSON: Yes, sir.

14 THE COURT: And do you understand them?

15 MR. NELSON: Yes, sir.

16 THE COURT: Do you understand that the final decision as
17 to how the guidelines are calculated and ultimately what sentence
18 will be imposed rests with the District Judge?

19 MR. NELSON: Yes, sir.

20 THE COURT: If the District Judge would calculate the
21 guidelines differently from what you've discussed with your
22 attorney, that fact would not give you the right to withdraw or
23 change your plea of guilty. Do you understand that?

24 MR. NELSON: Yes, sir.

25 THE COURT: Once the District Judge establishes the

1 advisory guideline range, in some circumstances, you could be
2 sentenced above that range and, in other circumstances, you could
3 be sentenced below that range. And again, the judge's decision,
4 if you disagreed, would not give you the right to withdraw your
5 plea of guilty. Do you understand that?

6 MR. NELSON: Yes, sir.

7 THE COURT: Now, Mr. Nelson, you have a right to a trial
8 by jury with all the protections that I explained to you at the
9 beginning of these proceedings. Do you understand your right to
10 a trial by jury?

11 MR. NELSON: Yes, sir.

12 THE COURT: And do you understand that if the court
13 accepts your plea of guilty that there won't be a trial?

14 MR. NELSON: Yes, sir.

15 THE COURT: Now, I'm going to ask you about the offense
16 charged in the Indictment. I would remind you that you are under
17 oath. You must answer truthfully. Any false answers could
18 result in charges of false swearing or perjury. You always have
19 the right to remain silent. And I want you to listen carefully
20 because I'm going -- in a moment going to ask the attorney for
21 the United States to state for the record the evidence that he
22 believes that he could present at trial to prove or establish
23 your guilty beyond a reasonable doubt to the satisfaction of the
24 judge or jury. After he's finished, I'm going to ask you if you,
25 in fact, did the things that he's stated for the record that he

1 states for the record that he can prove. Mr. Nguyen?

2 MR. NGUYEN: Thank you, Your Honor. If this case were
3 to proceed to trial, the Government would prove beyond a
4 reasonable doubt that on December 21st of 2016, at approximately
5 6:57 a.m., Greene County Sheriff's Officer Corporal Andrew Webb
6 observed a vehicle which had been reported stolen traveling
7 southbound on West Bypass Expressway in Springfield, Missouri.
8 The corporal activated his emergency equipment and attempted to
9 stop the vehicle. After a short pursuit, Corporal Webb
10 discontinued the chase in conformity with departmental policies.
11 Shortly thereafter Corporal Webb was advised that the vehicle had
12 pulled into the driveway of a nearby residence and three
13 occupants of the vehicle fled from the vehicle on foot. Corporal
14 Webb located a male subject, later identified as the defendant in
15 this case, David Nelson, who he recognized as the driver of the
16 vehicle standing in the backyard of a home located at 3125 West
17 State Street. The corporal ordered Nelson to get on the ground
18 prompting Nelson to run from the area. The corporal noted that
19 Nelson was carrying an object coated with camouflage paint and
20 wearing a backpack. Nelson was found moments later after an
21 individual alerted the police that Nelson had hidden himself in
22 his shed. Nelson was placed under arrest. Corporal Webb
23 conducted a search of the shed from which Nelson had emerged and
24 located a Ruger Model P95DC .9mm pistol, Serial Number 31252768;
25 a Hi-Point Model CF380 .380-caliber pistol bearing Serial Number

1 P800279; a camouflage Mossberg Model 751 .22-caliber rifle
2 bearing Serial Number EL83340276; and, a Beretta Model Tomcat
3 .325-caliber pistol bearing Serial Number DAD278841. The Hi-
4 Point pistol was located in the same backpack that Nelson had
5 been wearing during the pursuit. The owner of the shed confirmed
6 that the firearms did not belong to him. The defendant had been
7 previously convicted of aggravated assault in the state of
8 Tennessee, and being a felon in possession of a firearm, and
9 conspiracy to manufacture methamphetamine in a United States
10 District Court for the Western District of Tennessee. Those
11 crimes are punishable by terms of imprisonment exceeding one
12 year. The firearms in question were manufactured outside of the
13 state of Missouri and were operational at the time. And that
14 would conclude the Government's evidence if this case were to
15 proceed to trial.

16 THE COURT: And, Mr. Nguyen, I know you indicated that
17 the stop was made by a Greene County Sheriff's Deputy, but did
18 that stop occur in Greene County or did this encounter occur in
19 Greene County, Missouri?

20 MR. NGUYEN: Yes, Your Honor. The stop occurred on West
21 Bypass Expressway in Springfield, Missouri.

22 THE COURT: All right. Thank you. Mr. Nelson, you've
23 listened to the evidence regarding the Government's case. Did
24 you, in fact, do the things that he's stated for the record and
25 did you, in fact, possess the firearms noted for the record?

1 MR. NELSON: Yes, sir.

2 THE COURT: Ms. Koszuth, you've had access to the
3 Government's discovery file in this case, have you not?

4 MS. KOSZUTH: Yes, Your Honor.

5 THE COURT: And based upon your review of the discovery
6 file, are you satisfied if put to proof, that the United States
7 could make a submissible case as to all the elements pertaining
8 to the Indictment as set forth in the Factual Basis?

9 MS. KOSZUTH: Yes, Your Honor.

10 THE COURT: There is an adequate factual basis for the
11 plea of guilty to the Indictment. I find that the plea is
12 voluntary and did not result from force, threats or promises.
13 Mr. Nelson, you are represented in this case by Ms. Koszuth.
14 Have you had enough time to talk with her about your case?

15 MR. NELSON: Yes, sir.

16 THE COURT: Are you satisfied with the advice that she's
17 given you?

18 MR. NELSON: Yes, sir.

19 THE COURT: The law requires me to ask you if this
20 morning you are on any medication prescribed by a physician or
21 any drugs or alcohol of any kind which would affect your ability
22 to understand these proceedings?

23 MR. NELSON: I am on prescribed medication for PTSD.
24 I'm on Celexa.

25 THE COURT: And does that medicine in any way affect

1 your ability to understand what we've done here today?

2 MR. NELSON: No, sir.

3 THE COURT: And, Ms. Koszuth, I know you've interacted
4 with the defendant throughout his case. Based on your
5 interaction previously and then today is there any doubt in your
6 mind that the medication he takes does not affect his ability to
7 understand these proceedings?

8 MS. KOSZUTH: No, Your Honor.

9 THE COURT: Well, understanding that, Mr. Nelson, and
10 the other matters that we've discussed this morning, is it your
11 desire for the court to accept the plea of guilty?

12 MR. NELSON: Yes, sir.

13 THE COURT: Mr. Nguyen, on behalf of the United States,
14 do you have any other record under Rule 11 that you think I need
15 to make?

16 MR. NGUYEN: No, Your Honor. Thank you.

17 THE COURT: Ms. Koszuth, on behalf of the defendant, do
18 you have any other record under Rule 11 that you think I need to
19 make?

20 MS. KOSZUTH: No, Your Honor.

21 THE COURT: I will recommend the plea of guilty be
22 accepted and I will order a Presentence Investigation to be
23 conducted by the Probation Office. Mr. Nelson, good luck to you,
24 sir. With that, we'll be in recess.

25 (Court Adjourned at 9:39 a.m.)

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4 I certify that the foregoing is a correct transcript
5 from the electronic sound recording of the proceeding in the
6 above-entitled matter.

7
8 /s/ Lissa C. Whittaker
Signature of transcriber

March 4, 2018
Date